

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

FILED
JUL 20 2015
Clerk, U.S. District Court
District Of Montana
Billings

TWAIN NEWMAN AYERS,

Petitioner,

vs.

DAVID BERKEBILE, et al.,

Respondents.

Cause No. CV 15-65-BLG-SPW

ORDER DISMISSING PETITION
AND DENYING CERTIFICATE OF
APPEALABILITY

Petitioner Twain Newman Ayers, a state prisoner proceeding pro se, has previously filed multiple habeas petitions in this Court under 28 U.S.C. § 2254. On July 13, 2015, he filed yet another.

Ayers was convicted and sentenced in Dawson County on October 7, 2011, for a fourth or subsequent offense of driving under the influence of alcohol. He was convicted and sentenced in Yellowstone County on October 28, 2011, for issuing a bad check. Regardless of which conviction he intends to challenge in the instant petition, he has already litigated a habeas petition concerning that judgment to conclusion in this Court. *See Ayers v. Laughlin, et al.*, Nos. CV 14-110 and 14-164-BLG-DLC (D. Mont. judgment entered Jan. 21, 2015).

Ayers may file another petition only if and when he obtains leave to do so from the Ninth Circuit Court of Appeals. 28 U.S.C. § 2244(b). He must present his

allegations of “actual innocence” and “newly discovered evidence” as well as the underlying claims for relief to the Court of Appeals. This Court does not have jurisdiction to hear either his claims against the judgments or his arguments as to why he should be able to proceed with a new petition. *Burton v. Stewart*, 549 U.S. 147, 149 (2007) (per curiam).

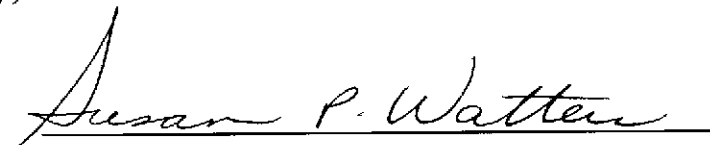
Ayers does not make any showing that he was deprived of a constitutional right. In addition, this Court plainly lacks jurisdiction under *Burton*. A certificate of appealability is not warranted. 28 U.S.C. § 2253(c)(2).

Based on the foregoing, the Court enters the following:

ORDER

1. Ayers’s Petition (Doc. 1) is DISMISSED for lack of jurisdiction as an unauthorized second or successive petition under 28 U.S.C. § 2254.
2. The Clerk of Court is directed to enter a judgment of dismissal.
3. A certificate of appealability is DENIED.
4. This case is CLOSED. Other than a notice of appeal, no action will be taken on any further filings under this cause number.

DATED this 20th day of July, 2015.



Susan P. Watters
United States District Court